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THE MAINE LEMON LAW AND STATE ARBITRATION

§ 7. 1. Introduction

The Maine Lemon Law allows consumers with a severely defective new vehicle to have their cases heard by a state arbitrator, free of charge. The arbitrator will hold a hearing and issue a decision within 45 days of acceptance of the completed Lemon Law application. This chapter contains the following materials:

§ 7. 2. Consumer's Guide To State Lemon Law Arbitration

§ 7. 3. Maine Lemon Law (10 M.R.S.A. §§1161-69)

§ 7. 2. Consumer's Guide To State Lemon Law Arbitration

A. *What Is The Maine Lemon Law?*

The Maine Lemon Law, 10 M.R.S.A. §§ 1161-1169, protects consumers who have serious defects in their new or used vehicles. The law defines a “lemon” as a vehicle either *purchased* or *leased* in Maine, which has a defect that *substantially impairs the use, safety or value* of the vehicle, *and* which has not been repaired after a *reasonable number of attempts*.¹ If your vehicle is found to be a lemon then the manufacturer must give you a replacement vehicle or refund your money.

B. *What Is The State Lemon Law Arbitration Program?*

If a substantial defect still exists or recurs after a reasonable number of repair attempts, the consumer has the right to a refund or a replacement vehicle. If the manufacturer refuses to take back your vehicle you can seek a State Lemon Law Arbitration Hearing and receive a decision within 45 days of the acceptance of your application. This state arbitration service is provided to you at no cost, except for the \$1.00 Lemon Law fee you pay when you buy a new vehicle. Please keep in mind that not all car problems are serious enough to qualify for relief under the Lemon Law. You must apply for State Lemon Arbitration within three² years from the date your car was originally sold and within the manufacturer's warranty coverage period.

¹ See *DaimlerChrysler v. Exec. Dir. Rev. Servs.*, 922 A.2d 465, 468 (Me. 2007) (Maine Lemon Law provides consumers with a statutory right to have manufacturers make repairs to vehicles that do not conform to all express warranties).

² Prior to September 13, 2003 the period was two years.

C. What Vehicles Are Covered By The Lemon Law?

The Maine Lemon Law covers any new *or used* car, motorcycle, van, truck or RV, bought or leased in Maine from a dealer and which is still within the Lemon Law's "term of protection." This Lemon "protection period" is the length of the manufacturer's express warranty, or three³ years from the date of delivery to the original consumer buyer, or 18,000 miles of use, whichever comes first.⁴ You must notify the manufacturer or the dealer about your vehicle's defect before this protection period ends. Subsequent owners can still be eligible for state lemon law arbitration. This can happen if you purchased the vehicle used but it is still protected by the manufacturer's original express warranty.

Even if they fall within the protection period, the following cars are not covered by the Lemon Law: (1) those purchased for a governmental agency, a business which registers three or more vehicles, (2) primarily commercial vehicle that have gross vehicle weight (G.V.W.) of 8,500 pounds or more, or (3) vehicles purchased in order to resell them.

D. What Problems Are NOT Covered By The Lemon Law?

The Lemon Law does not cover vehicles with the following types of problems:

- (1) defects which do not substantially impair the vehicle's use, value, or safety;
- (2) defects caused by owner negligence;
- (3) defects resulting from accident, or vandalism;
- (4) defects resulting from unauthorized repair or alteration of the vehicle by a person other than the manufacturer, its agents or authorized dealers; or
- (5) defects that subjectively but not objectively shakes the buyer's confidence in the integrity of the vehicle.⁵

³ Prior to September 13, 2003 the period was two years.

⁴ Thus, new, used or so-called "program vehicles" (e.g., fleet rental vehicles, dealer demonstrators, dealer loaner vehicles) could fall under the Lemon Law if they are still within the Lemon Law "term of protection."

⁵ See *Jolovitz v. Alfa Romeo Distributors of North America*, 760 A.2d 625, 628 (Me. 2000).

E. What Is Substantial Impairment?

The Lemon Law only covers serious defects—those which substantially impair the use, safety or value of the vehicle. However, the law does not list specific defects, which are considered substantial. You must be able to demonstrate how your vehicle has been substantially impaired. For example, to prove substantial value impairment, you could show that the retail value of your vehicle is significantly less than it would be without the defect. Although a defect may be annoying, it is not necessarily “substantial”. See *Jolovitz v. Alfa Romeo Distributors*, 760 A2.d 625, 628 (Me. 2000) (a nonconformity will trigger replacement or refund only if manufacturer is unable to demonstrate objectively that the nonconformity has little effect on use safety or value. For example, here is part of a 2008 Arbitrator’s decision that concluded the consumer’s vehicle vibration did *not* rise to the level of “substantial impairment.”

The vibration that intermittently occurred during the 40 minute test drive on the arbitration day was extremely minor, and would not at all rise to the level of a substantial impairment. The vibration however has been verified by an independent mechanic as well as by the authorized dealership’s technicians. Additionally, the vibration was experienced by the Field Technician Specialist during the manufacturer’s “final opportunity to repair” period. While the independent mechanic [qualifications not known] stated it was not normal and could cause significant transmission issues in time, I must weigh that statement against the statement offered by Chrysler’s Specialist which indicates the vibration is consistent and normal for this particular model vehicle. The consumers were also advised on how they could avoid this vibration if they used the auto-stick transmission.

The consumers have not experienced any situations where their safety has been compromised by the vibration. The consumers did not bring in an appraisal of their vehicle by a professional (not an automobile sales person.) The consumers are able to use their vehicle with the present vibration. The consumers are disappointed in the performance of their vehicle but the condition causing their disappointment does not substantially impair their use, safety, or value.⁶

F. How Many Repair Attempts Before Your Car Is A Lemon?

The Lemon Law gives the manufacturer, its agent or authorized dealer a “reasonable number of attempts” to repair the substantial defect. The Lemon Law creates a presumption that a reasonable number of attempts has been allowed if either of the following happens within the law’s “term of protection” (the manufacturer’s express warranty, three years after delivery to the original buyer, or 18,000 miles of use, whichever comes first):

⁶ Roberta and Randy MacDonald Arbitration (November 6, 2008).

- (1) a repair was attempted *three or more times for the same substantial defect*⁷; or
- (2) a single repair was attempted for a serious failure of either the braking or steering system⁸; or
- (3) repairs were attempted for any defect or combination of defects that resulted in the vehicle being out of service for a cumulative total of 15 or more business days.

Note: A business day is any day that the service department of an authorized dealer is open for business.

If the defect continues or recurs despite the repair attempts and still substantially impairs your vehicle, then you can take the next step in the Lemon Law process—offering the manufacturer a final repair opportunity.

If your defect is so serious that you cannot wait (e.g., a safety problem) you do not necessarily have to meet the repair attempts standard. However, you must give the manufacturer at least one opportunity to repair and then a “final opportunity to repair.”

G. What is the “Final Opportunity To Repair ” Requirement?

Once the manufacturer or authorized dealer has not been able to repair the substantial defect, and the problem continues or recurs, you must contact the manufacturer in writing and state that you want a refund or replacement and that you will give the *manufacturer one final repair opportunity*, of at least seven business days, to fix the defect.

*You should send notification of the manufacturer’s final opportunity to repair by **certified mail, return receipt requested**, to the manufacturer’s regional office.* (See sample.) This way you can prove when the manufacturer received it. You may get the manufacturer’s address from your warranty information or from the Attorney General’s Lemon Law Arbitration Program at 207-626-8848.

It is *essential* to keep copies of your “final opportunity to repair” letter, request for a refund or replacement, as this is a necessary step before you can receive Lemon Law relief. Once the manufacturer receives your letter, the manufacturer will have 7 business days to make a final repair attempt. You must cooperate with this final repair attempt in order to be eligible for Lemon Law relief.

Make sure you include in your notice telephone numbers at which the dealer or manufacturer may reach you or leave a message. You should be prepared to turn over your car to the manufacturer for a repair attempt after you give the final opportunity notice.

The manufacturer may choose *not* to use this final opportunity to attempt repair. If after the seven business days the substantial defect has not been repaired, *or* has been repaired and recurs, you may very well have the right to a refund or replacement under the Lemon Law. If the manufacturer does not voluntarily return your money or provide you with a replacement vehicle, you may request a State arbitration hearing.

When you notify the manufacturer of its final opportunity to repair, we recommend you use the following form letter (simply fill in the blanks). *Keep a copy of the letter for your records.*

⁷ Prior to legislation effective September 3, 2003 at least two of the repair attempts had to be by the same dealer or the manufacturer. See *Jolovitz v. Alfa Romeo Distributors of North America*, 760 A.2d 625, 626 (Me. 2000) (a motor vehicle nonconformity that resists repair after three attempts will trigger replacement or refund under the Lemon Law only if the manufacturer is unable to demonstrate objectively that the non-conformity has little affect on its use, safety or value).

⁸ This provision was effective September 13, 2003.

MAINE LEMON LAW
NOTICE OF FINAL OPPORTUNITY TO REPAIR
Pursuant to 10 M.R.S.A. § 1163 (3-A)

| | |
|---------------------------|-----------------------------------|
| Consumer | Manufacturer |
| Address | Address |
| Consumer's Home Telephone | Consumer's Work/Daytime Telephone |

Vehicle Information

| | | | |
|------------------|-------|-----------------------|-------------------------------|
| Make | Model | Year | Vehicle Identification Number |
| Date of Purchase | | Dealer Purchased from | |

I request either a replacement vehicle or the refund of the purchase price. The above-named vehicle is seriously defective and you have not been able to repair it. You now have one final opportunity to repair the following problems with my vehicle:

| |
|--|
| |
| |
| |

If these problems are not successfully repaired within **seven business days** following receipt of this notice, I will seek my full Lemon Law remedies.

Note: The Maine Lemon Law also allows consumers to satisfy this manufacturer notice requirement by notifying in writing the authorized dealer of a claim under this section. The dealer shall act as the manufacturer's agent and immediately communicate to the manufacturer the consumer's claim. *See* 10 MRSA § 1163 (6-A).

Date Given to Dealer _____ Dealer's Name _____

| | |
|-----------------------|------|
| Signature of Consumer | Date |
|-----------------------|------|

White copy mail to manufacturer

Submit yellow copy with Lemon Law application

Pink copy for your records

revised 7/07

H. How Can I Prove My Vehicle Is A Lemon?

If you have a serious problem with your vehicle, it is very important that you keep complete and accurate records of all contacts with the manufacturer or dealer, and all receipts. You have a right to an itemized bill for any repair work, including warranty repair work, under the Maine Lemon Law (10 M.R.S.A. § 1169(9)). You should request a copy of these records, and examine them to be certain that the problem you complained about is listed.

Under the Maine Lemon Law you can also request copies of all reports dealing with your vehicle, such as reports by the dealer or the manufacturer concerning inspection, diagnosis, or test-drives of that vehicle, and any technical reports, bulletins, or notices issued by the manufacturer regarding your vehicle's specific make and model.

You can also have your vehicle evaluated by an independent mechanic and have him testify at your arbitration hearing or if he is not available, write out his diagnosis and submit it to the arbitrator.

I. Am I Only Entitled To A Replacement Vehicle?

If your vehicle is determined to be a lemon, the manufacturer must offer you a refund or replacement vehicle. If the manufacturer offers a replacement vehicle, it must be one that is acceptable to you. You are free to reject a replacement vehicle and demand a refund. However, you cannot reject a refund and demand a replacement.

J. How Much Of A Refund Am I Entitled To?

If you choose to get a refund, you will receive the full contract price of the vehicle. If you leased your vehicle, you will receive your down payment, any trade-in allowance, and the total of lease payments made to date.

In either case your refund will be reduced by a reasonable allowance for use. The mileage deduction in a Lemon Law award is based on 1/3 of the IRS standard deduction for operating a car for business miles driven, or 10 % of the purchase price, whichever is less. Contact the Lemon Law office for the current mileage deduction rate (800-436-2131 or 207-626-8848, lemon.law@maine.gov).

Note: You may keep your vehicle until you have been given a refund or an acceptable replacement vehicle. However, miles driven over 20,000 miles during this time will be included when calculating the reasonable allowance for use.

Cost Reimbursement. If the manufacturer issues a refund, you can be reimbursed for the following costs:

- (1) The total purchase price (total price before you subtracted any rebates or deposits or your trade-in allowance) or, if a leased vehicle, the lease payments made to date; included in the full purchase price are the costs of all dealer added options or services (e.g., radio, air conditioning);
- (2) collateral charges, including, sales tax, document fees, title and arbitration fees and registration fees;
- (3) Interest paid on vehicle financing.
- (4) costs incurred by you for towing and storage of the vehicle and for procuring alternative transportation while the vehicle was out of service by reason of repair, or was undriveable (arbitrator's discretion); and
- (5) reasonable expert witness fees.

Refund/Replacement Costs Not Recoverable. The following are **not** reimbursable as the result of a favorable Lemon Law arbitration decision:

- (1) attorney's fees;
- (2) time lost from work;
- (3) other consequential damages;
- (4) excise taxes;
- (5) extended service contracts (warranties);
- (6) rebates.

K. What Exactly Is Lemon Arbitration?

Arbitration is an inexpensive and informal way to resolve your complaint without going to court. In arbitration, the consumer and the manufacturer present evidence about the condition of the vehicle to an impartial arbitrator. The arbitrator will then decide the case and issue a written decision. There are two types of lemon arbitration: state-run and manufacturer-sponsored.

(1) State-Run Lemon Law Arbitration

The state's Lemon Law Arbitration Program hears only Lemon Law cases. You will receive an arbitrator's decision within 45 days of acceptance of your arbitration request. Except for a \$1 arbitration fee you pay when you purchase your new or used car, there is no fee for State Lemon Arbitration. The Attorney General has selected the Secretary of State's Hearing Examiners Office in the Department of Motor Vehicles to conduct all State Lemon Law Arbitrations. These Hearing Examiners are neutral professional examiners, and will hold Lemon Law arbitrations in different locations around the state.

State Arbitration is "All or Nothing." The purpose of a state-run arbitration hearing is to determine whether or not your vehicle qualifies for refund or replacement under the Lemon Law. If the arbitrator determines that your vehicle meets the Lemon Law standards, you will be awarded a full refund (less the use allowance and the amount of any previous settlement from the manufacturer) or replacement. If the arbitrator decides that your vehicle is not a "lemon," there will be no award.

(2) Manufacturer-Sponsored Lemon Arbitration

You may also request manufacturer-sponsored arbitration for Lemon Law defects, as well as for other less serious problems. A manufacturer arbitrator or panel will not necessarily apply the Lemon Law standards. The arbitrator can order additional repairs or partial or full refunds. Most manufacturers are bound by the decisions of their arbitration programs. However, if you are dissatisfied with the results of manufacturer-sponsored arbitration, you may then request state-run arbitration or you can sue in court under the Maine Lemon Law or other Maine laws. Your warranty booklet should provide you with additional information about the manufacturer's arbitration program or you can contact its zone or regional office.

(3) Differences Between State and Manufacturer Arbitration

(3) Differences Between State and Manufacturer Arbitration

The two main differences between the manufacturers' arbitration programs and State Lemon Law Arbitration are:

- (a) The manufacturer's arbitration program can order additional repairs, but the state arbitration program can only order a replacement car or a full refund or no relief at all; and

- (b) The manufacturer is bound by its own arbitrator's decision, but can appeal a state Lemon Arbitration decision.

(4) Lemon Law Court Actions

If the state arbitrator's decision is not favorable you can appeal it to Superior Court or you can initiate, on your own, a new court action. This new court action can ask for Lemon Law remedies or other relief that may be available to you under the Maine Unfair Trade Practices Act, the Maine Uniform Commercial Code, common law or other state or federal laws. If you are considering an appeal or a new court action you should certainly consult an attorney.

L. Outline Of The Lemon Law Process

Here are the six stages of a Lemon Law claim:

- (1) Motor vehicle has serious defect or combination of defects.
- (2) There were a reasonable number of repair attempts but defect continues.
- (3) The Manufacturer was given a Final Repair Opportunity (no more than seven business days.)
- (4) The defect is not repaired.
- (5) The consumer receives a State Lemon Arbitration Hearing within 45 days.
- (6) The consumer receives a refund or replacement vehicle if the Arbitrator finds that the defect substantially impairs the use, safety or value of the motor vehicle.

M. For Lemon Law Help

Here are some agencies to contact if you feel your vehicle is a lemon:

- (1) Information on your rights under the Maine Lemon Law and State Lemon Law Application Form:
Lemon Law Arbitration Program
Office of the Attorney General
Consumer Protection Division
6 State House Station
Augusta, ME 04333-0006
800-436-2131 or 207-626-8848
lemon.law@maine.gov
- (2) To inquire whether your car has a serious defect or has been recalled:
National Highway Traffic Safety Administration 1-800-424-9393
Web site: www.NHTSA.DOT.GOV
Center For Auto Safety (recall and defect information) 1-202-328-7700
Web site: www.autosafety.org

N. If Your Arbitration Decision Is Unfavorable

If you are not accepted into the Attorney General's Lemon Law Arbitration Program, or if you receive an unfavorable decision from the Arbitrator (about 50% of all arbitrations are decided in favor of the manufacturer) you still have several possible remedies:

- (1) Manufacturer's Arbitration Programs: *see* your warranty book; these arbitrations are provided free of charge;
- (2) Attorney General Mediation: *see* Section 1.8 in this Guide;
- (3) Appeal of the Arbitrator's decision: both the consumer and the manufacturer have the right to appeal the Arbitrator's decision to Maine Superior Court;
- (4) Your own Lemon Law Court Challenge: the State Lemon Law Arbitrator's decision is not binding on so you can still start your own Superior Court case to prove that your vehicle meets the statutory definition of a Lemon; and
- (5) Reapplication for State Lemon Law Arbitration: if there is a significant change in circumstances you can reapply, providing all other requirements are met.

§ 7. 3. **Maine Lemon Law (10 M.R.S.A. §§ 1161-69)**

TITLE 10, CHAPTER 203-A MANUFACTURER WARRANTIES ON MOTOR VEHICLES

§ 1161. *Definitions*

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Consumer. “Consumer” means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle and any other person entitled by the terms of the warranty to enforce the obligations of the warranty, except that the term “consumer” shall not include any governmental entity, or any business or commercial enterprise which registers three or more motor vehicles.

2. Manufacturer. “Manufacturer” means manufacturer, importer, distributor or anyone who is named as the warrantor on an express written warranty on a motor vehicle.

3. Motor Vehicle. “Motor vehicle” means any motor driven vehicle, designed for the conveyance of passengers or property on the public highways, that is sold or leased in this State, except that the term “motor vehicle” does not include any vehicle used primarily for commercial purposes with a gross vehicle weight of 8,500 pounds or more.

4. Reasonable allowance for use. “Reasonable allowance for use” means an amount that can not exceed the lesser of 1/3 of that amount allowed per mile by the United States Internal Revenue Service as provided by regulation, revenue procedure or revenue ruling promulgated under the United States Internal Revenue Code, Title 26, Section 162 for the use of a personal vehicle for business purposes based upon the mileage reported for that motor vehicle on the application for state-certified arbitration accepted by the State plus all mileage directly attributable to use by a consumer beyond 20,000 miles or 10% of the purchase price of the vehicle.

5. State-certified arbitration. “State-certified arbitration” means the informal dispute settlement procedure administered by the Department of the Attorney General which arbitrates consumer complaints dealing with new motor vehicles that may be so defective as to qualify for equitable relief under the Maine lemon laws.

§ 1161-A. *Short title*

This chapter may be known and cited as “the Maine Lemon Law.”

§ 1162. *Scope; construction.*

1. Consumer Rights. Nothing in this chapter in any way limits the rights or remedies which are otherwise available to a consumer under any other law.

2. Manufacturers, distributors, agents and dealers. Nothing in this chapter in any way limits the rights or remedies of franchisees under chapter 204 or other applicable law.

3. Waivers void. Any agreement entered into by a consumer which waives, limits or disclaims the rights set forth in this chapter shall be void as contrary to public policy.

§ 1163. *Rights and duties.*

1. Repair of non-conformities. If a new motor vehicle does not conform to all express warranties, the manufacturer, its agent or authorized dealer shall make those repairs necessary to conform the vehicle to the express warranties if the consumer reports the nonconformity to the manufacturer, its agent or authorized dealer during the term of the express warranties, within a period of 3 years following the date of original delivery of the motor vehicle to a consumer, or during the first 18,000 miles of operation of that motor vehicle, whichever occurs earliest. This obligation exists notwithstanding the fact that the repairs are made after the expiration of the appropriate time period.

2. Failure to make effective repair. If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition, or combination of defects or conditions, that substantially impairs the use, safety or value of the motor vehicle after a reasonable number of attempts, the manufacturer shall either replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and make a refund to the consumer and lien holder, if any, as their interests may appear. The consumer may reject any offered replacement and receive instead a refund. The refund must consist of the following items, less a reasonable allowance for use of the vehicle:

A. The full purchase price or, if a leased vehicle, the lease payments made to date, including any paid finance charges on the purchased or leased vehicle;

B. All collateral charges, including, but not limited to, sales tax, registration fees and similar government charges; and

C. Reasonable costs incurred by the consumer for towing and storage of the vehicle and for procuring alternative transportation while the vehicle could not be driven because it did not conform to any applicable express warranty.

The provisions of this section do not affect the obligations of a consumer under a loan or sales contract or the secured interest of any secured party. The secured party shall consent to the replacement of the security interest with a corresponding security interest on a replacement motor vehicle, that is accepted by the consumer in exchange for the motor vehicle, if the replacement motor vehicle is comparable in value to the original motor vehicle. If, for any reason, the security interest in the motor vehicle having a defect or condition is not able to be replaced with a corresponding security interest on a motor vehicle accepted by the consumer, the consumer is entitled to a refund. Refunds required under this section must be made to the consumer and the secured party, if any, as their interests exist at the time the refund is to be made. Similarly, refunds to a lessor and lessee must be made as their interests exist at the time the refund is to be made.

3. Reasonable number of attempts; presumption. There is a presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

A. The same nonconformity has been subject to a repair attempt 3 or more times by the manufacturer or its agents or authorized dealers within the express warranty term, during the period of 3 years following the date of original delivery of the motor vehicle to a consumer or during the first 18,000 miles of operation of that motor vehicle, whichever occurs earliest, and the nonconformity continues to exist;

A-2. The same nonconformity has resulted in a serious failure of either the braking or steering system in the vehicle and has been subject to a repair attempt one or more times by the manufacturer or its agents or authorized dealers during the warranty term or the appropriate time period, whichever occurs earlier; or

B. The vehicle is out of service by reason of a repair attempt by the manufacturer, its agents or authorized dealer, of any defect or condition or combination of defects for a cumulative total of 15 or more business days during that warranty term or the appropriate time period, whichever occurs earlier.

3-A. Final opportunity to repair. If the manufacturer or its agents have been unable to make the repairs necessary to conform the vehicle to the express warranties, the consumer shall notify, in writing, the manufacturer or the authorized dealer of the consumer's desire for a refund or replacement. This notice can be given after one repair attempt if the nonconformity has resulted in a serious failure of either the braking or steering systems in the vehicle. For the seven business days following receipt by the dealer or the manufacturer of this notice, the manufacturer has a final opportunity to correct or repair any nonconformities. This final repair must be at a repair facility that is reasonably accessible to the consumer. This repair effort does not stay the time period within which the manufacturer must provide an arbitration hearing pursuant to § 1165.

4. Time limit, extension. The term of an express warranty, the 18,000 mileage term, the 3-year period following delivery and the 15-day period provided in subsection 3, paragraph B, must be extended by any period of time during which repair services are not available to the consumer because of a war, invasion or strike or fire, flood or other natural disaster.

5. Dealer liability. Nothing in this chapter may be construed as imposing any liability on a dealer or creating a cause of action by a consumer against a dealer under this section, except regarding any written express warranties made by the dealer apart from the manufacturer's own warranties.

6. Disclosure of notice requirement. No consumer may be required to notify the manufacturer of a claim under this section, unless the manufacturer has clearly and conspicuously disclosed to the consumer, in the warranty or owner's manual, that written notification of the nonconformity is required before the consumer may be eligible for a refund or replacement of the vehicle. The manufacturer shall include with the warranty or owner's manual the name and address to which the consumer shall send the written notification.

6-A. Notification of Dealer. Consumers may also satisfy a manufacturer's notice requirement by notifying in writing the authorized dealer of a claim under this section. The dealer shall act as the manufacturer's agent and immediately communicate to the manufacturer the consumer's claim

7. Disclosure at time of resale. A motor vehicle that is returned to the manufacturer under subsection 2, may not be resold without clear and conspicuous written disclosure to any subsequent purchaser, whether that purchaser is a consumer or a dealer, of the following information

A. That the motor vehicle was returned to the manufacturer under this chapter;

- B. That the motor vehicle did not conform to the manufacturer's express warranties; and
- C. The ways in which the motor vehicle did not conform to the manufacturer's express warranties.

The certificate of title of a vehicle subject to the disclosure requirements of this subsection is subject to the branding requirements of Title 29-A, § 670.⁹

8. Disclosure at time of retail sale under settlement agreement. A motor vehicle that is surrendered to a manufacturer as a result of a settlement of a state-certified arbitration must, at the time the vehicle is first offered for retail sale to the public, be affixed with a clear and conspicuous written disclosure stating that the vehicle was the subject of a Maine Lemon Law settlement agreement.

§ 1164. Affirmative defense.

It is an affirmative defense to any claim under this chapter that:

- 1. **Lack of impairment.** An alleged nonconformity does not substantially impair the use, safety or value of the motor vehicle; or
- 2. **Abuse.** Nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agents or authorized dealers since delivery to the consumer.

§ 1165. Informal dispute settlement

If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of 16 CFR, Part 703, as from time to time amended, the provisions of section 1163, subsection 2, concerning refunds or replacement shall not apply to any consumer who has not first resorted to that procedure or to state-certified arbitration. This requirement shall be satisfied 40 days after notification to the informal dispute settlement procedure of the dispute or when the procedure's duties under 16 CFR, Part 703.5(d) are completed, whichever occurs sooner.

§ 1166. Unfair or deceptive trade practice

A violation of any of the provisions of this chapter shall be considered prima facie evidence of an unfair or deceptive trade practice under Title 5, chapter 10.

§ 1167. Attorney's fees

In the case of a consumer's successful action to enforce any liability under this chapter, a court may award reasonable attorney's fees and costs incurred.

§ 1168. New car leases

For the purposes of this chapter only, the following apply to leases of new motor vehicles.

⁹ 29-A M.R.S.A. §670 reads as follows:

This section applies to any motor vehicle subject to the disclosure requirements of Title 10, section 1163, subsection 7. A manufacturer to whom the motor vehicle was returned pursuant to Title 10, section 1163, subsection 2 shall return the title of the motor vehicle to the Secretary of State with an application for a new title in the name of the manufacturer. The Secretary of State shall issue a certificate of title that includes the following brand: "Lemon Law Buyback." All subsequent certificates of title to that vehicle must contain the same brand.

1. Warranties. If express warranties are regularly furnished to purchasers of substantially the same kind of motor vehicles:

- A. Those warranties are deemed to apply to the leased motor vehicles; and
- B. The consumer lessee is deemed to be the first purchaser of the motor vehicle for the purpose of any warranty provisions limiting warranty benefits to the original purchaser.

2. Lessee's rights. The lessee of a motor vehicle has the same rights under this chapter against the manufacturer and any person making express warranties that the lessee would have under this chapter if the vehicle had been purchased by the lessee. The manufacturer and any person making express warranties have the same duties and obligations under this chapter with respect to the vehicle that the manufacturer and other person would have under this chapter if the goods had been sold to the lessee.

3. Termination of lease and obligations. The lessee's lease agreement with the motor vehicle lessor and all contractual obligations terminate upon a decision that the vehicle does not conform to the vehicle's express warranty and the return of the vehicle to the lessor. The lessee may not be liable to the manufacturer or motor vehicle lessor for any further costs or charges under the lease agreement. The motor vehicle lessor shall release the motor vehicle title to the manufacturer upon payment by the manufacturer under this chapter.

§ 1169. State-certified, new car arbitration

1. Neutral new car arbitration. All manufacturers shall submit to state-certified, motor vehicle arbitration if arbitration is requested by the consumer within 3 years from the date of original delivery to the consumer of a new motor vehicle or within the term of the express warranties, whichever comes first, and the State has accepted the application as making proper Maine Lemon Law claims.

State-certified arbitration must be performed by one or more neutral arbitrators selected by the Department of the Attorney General operating in accordance with the rules adopted pursuant to this chapter. The Attorney General may contract with an independent entity to provide arbitration or the Attorney General's office may appoint neutral arbitrators. Each party to arbitration is entitled to one rejection of a proposed arbitrator.

2. Written findings. Each arbitration results in a written finding of whether the motor vehicle in dispute meets the standards set forth by this chapter for vehicles that are required to be replaced or refunded. This finding must be issued within 45 days of receipt by the Department of the Attorney General of a properly completed written request by a consumer for state-certified arbitration under this section. All findings of fact issuing from a state-certified arbitration must be taken as admissible evidence of whether the standards set forth in this chapter for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in the arbitration. The finding reporting date may be extended by 5 days if the arbitrator seeks an independent evaluation of the motor vehicle. In addition to the other remedies provided by this chapter, the arbitrator may award a consumer whose motor vehicle is required to be replaced or refunded reasonable witness fees for a professional motor vehicle mechanic or engineer who prepared a notarized report on the condition of the vehicle or who testified at the arbitration hearing on behalf of the consumer.

3. Administered by Attorney General. The Department of the Attorney General shall promulgate rules governing the proceedings of state-certified arbitration, which shall promote fairness and efficiency. These rules shall include, but are not limited to, a requirement of the personal objectivity of each arbitrator in the results of the dispute that that arbitrator will hear, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party.

4. Consumer arbitration relief. If a motor vehicle is found by state-certified arbitration to have met the standards set forth in section 1163, subsection 2, for vehicles required to be replaced or refunded, and if the manufacturer of the motor vehicle is found to have failed to provide the refund or replacement as required, the manufacturer shall, within 21 days from the receipt of a finding, deliver the refund or replacement, including the costs and collateral charges set forth in section 1163, subsection 2, or appeal the finding in Superior Court. For good cause, a manufacturer may seek from the Department of the Attorney General an extension of the time within which it must deliver to the consumer a replacement vehicle.

5. Appeal of arbitration decision. An appeal by a manufacturer or consumer of the arbitrator's findings may not be heard unless the petition for appeal is filed with the Superior Court of the county in which the sale occurred, within 21 days of issuance of the finding of the state-certified arbitration. The appeal must be a trial de novo. The arbitrator and the Department of the Attorney General may not be parties in any such appeal and may not be called as witnesses

The Department of the Attorney General may submit an amicus curiae brief. In the event that any state-certified arbitration resulting in an award of a refund or replacement is upheld by the court, recovery by the consumer may include continuing damages up to the amount of \$25 per day for each day subsequent to the day the motor vehicle was returned to the manufacturer, pursuant to section 1163, that the vehicle was out of use as a direct result of any nonconformity, not issuing from owner negligence, accident, vandalism or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer, provided that the manufacturer did not make a comparable vehicle available to the consumer free of charge.

In addition to any other recovery, any prevailing consumer must be awarded reasonable attorney's fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award to the consumer.

6. Consumer's rights if arbitrator denies relief. The provisions of this chapter shall not be construed to limit or restrict in any way the rights or remedies provided to consumers under this chapter or any other state law. In addition, if any consumer is dissatisfied with any finding of state-certified arbitration, the consumer shall have the right to apply to the manufacturer's informal dispute settlement procedure, if the consumer has not already done so, or may appeal that finding to the Superior Court of the county in which the sale occurred within 21 days of the decision.

7. Disclosure of consumer lemon law rights. A clear and conspicuous disclosure of the rights of the consumer under this chapter shall be provided by the manufacturer to the consumer along with ownership manual materials. The form and manner of these notices shall be prescribed by rule of the Department of the Attorney General. The notice disclosures shall not include window stickers.

8. Manufacturer's failure to abide by arbitrator's decision. The failure of a manufacturer either to abide by the decision of state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer who has brought an action to enforce this chapter to an award of no less than 2 times the actual award, unless the manufacturer can prove that the failure was beyond the manufacturer's control or can show it was the result of a written agreement with the consumer.

9. Consumer request for information. Upon request from the consumer, the manufacturer or dealer shall provide a copy of all repair records for the consumer's motor vehicle and all reports relating to that motor vehicle, including reports by the dealer or manufacturer concerning inspection, diagnosis or test-drives of that vehicle and any technical reports, bulletins or notices issued by the manufacturer regarding the specific make and model of the consumer's new motor vehicle as it pertains to any material, feature, component or the performance of the motor vehicle.

10. Penalties. It shall be *prima facie* evidence of an unfair trade practice under Title 5, chapter 10, for a manufacturer, within 21 days of receipt of any finding in favor of the consumer in state-certified arbitration, to fail to appeal the finding and not deliver a refund or replacement vehicle or not receive from the Department of the Attorney General an extension of time for delivery of the replacement vehicle.

11. Arbitration and Mediation account. To defray the costs incurred by the Department of the Attorney General in resolving consumer new and used motor vehicle disputes through the lemon law arbitration program and, for vehicles that do not qualify for arbitration, the consumer mediation service, the following fees are imposed.

A. A \$1 lemon law arbitration program fee must be collected by the authorized new car dealer from the purchaser as part of each new motor vehicle sale agreement.

B. A \$1 consumer mediation service fee must be collected by the used car dealer from the purchaser as part of each used motor vehicle sale agreement.

The Secretary of State shall adopt rules to implement this subsection. The rules must provide that the fees imposed by this subsection must be forwarded annually by the dealer or its successor to the Secretary of State and deposited in the General Fund. At the end of each fiscal year, the Department of the Attorney General shall prepare a report listing the money generated by these fees during the fiscal year and the expenses incurred in administering its consumer dispute resolution programs.